

| | | |
|--|---|-------------------------------|
| |) | |
| J.W., Appellant |) | |
| |) | |
| and |) | Docket No. 15-465 |
| |) | Issued: April 29, 2015 |
| U.S. POSTAL SERVICE, POST OFFICE, |) | |
| Philadelphia, PA, Employer |) | |
| |) | |

Case Submitted on the Record

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

On December 22, 2014 appellant timely appealed from the December 16, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

The issue is whether appellant sustained a recurrence of disability on September 28, 2013 causally related to his January 28, 2009 employment injury.

² The case record provided to the Board includes evidence received after OWCP issued its December 16, 2014 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On January 28, 2009 appellant, then a 46-year-old letter carrier, slipped and fell in the performance of duty. He landed on his buttock and reported pain in the lower back. Appellant also reported having injured the back of his left leg/thigh just below his buttock. OWCP initially accepted the claim for lumbar sprain/strain. In June 2009, it expanded appellant's claim to include aggravation of underlying L1-2 disc herniation, aggravation of underlying L4-5 disc bulge, and lumbar radiculopathy.

Appellant received wage-loss compensation for temporary total disability through June 11, 2009. Effective June 12, 2009, he returned to work in a part-time, limited-duty capacity. Appellant was expected to case mail and pull down a route over the course of a four-hour workday. The June 12, 2009 job offer included a 20-pound lifting limitation. The majority of appellant's four-hour shift was devoted to casing mail. The job offer indicated that an average of 30 minutes would be spent lifting up to 20 pounds, as well as 30 minutes spent pulling down the route.³ Following his return to work, appellant received four hours of wage-loss compensation a day.

In May 2010, OWCP placed appellant on the periodic compensation rolls and continued to pay four hours of wage-loss compensation a day. Shortly thereafter, appellant inquired as to whether OWCP planned to issue a formal loss of wage-earning capacity (LWEC) determination. In July 2010, OWCP explained that a formal loss of wage earning capacity (LWEC) determination could not be issued prior to appellant having reached maximum medical improvement (MMI).

Appellant was a candidate for lumbar fusion surgery; however, he declined the recommended surgery. On July 20, 2010 his treating physician, Dr. Geld, provided permanent work restrictions.⁴

On September 10, 2010 OWCP asked the employing establishment to extend an offer of permanent employment consistent with Dr. Geld's July 20, 2010 work restrictions.

³ The limited-duty carrier position was based on the June 11, 2009 work restrictions imposed by appellant's treating physician, Dr. Gene I. Geld, a family practitioner. Appellant was also under the care of Dr. Gene Z. Salkind, a Board-certified neurosurgeon. In a June 8, 2009 work capacity evaluation (Form OWCP-5c), Dr. Salkind indicated that appellant could work a maximum of four hours per day, and he was able to push, pull, and lift 20 pounds up to a half hour. He also noted appellant could sit, walk, stand, and twist up to a half hour over the course of a four-hour workday. Lastly, appellant was precluded from bending/stooping and operating a motor vehicle at work.

⁴ Dr. Geld indicated that appellant could work a maximum of four hours a day. Although precluded from continuous lifting/carrying, appellant could lift/carry 20 pounds intermittently up to four hours. He was able to sit, stand, kneel, and walk continuously for a half hour, and intermittently up to four hours a day. Dr. Geld precluded all climbing, twisting, and bending/stooping. Appellant was also restricted to a half hour of pushing/pulling. Lastly, Dr. Geld noted that appellant could perform simple grasping, fine manipulation, and reach above shoulder for a half hour continuously and four hours intermittently. He subsequently clarified that appellant could not drive at work and should have a five- to seven-minute break every half hour.

On November 5, 2010 the employing establishment offered appellant a limited-duty assignment. Appellant's duties included "casing mail [and] maintaining all office duties" for his route up to four hours a day. Additional duties included recording change of addresses two to four hours a day, and casing mail on any open routes two to four hours a day. The offer recognized that appellant was not to exceed four hours of limited-duty work a day. There was also no crouching, stooping, or climbing. Other limitations included occasional walking, sitting, standing, and reaching overhead, not to exceed four hours. Lastly, the offer noted frequent grasping, fine manipulation, and repetitive reaching not to exceed four hours. The limited-duty position was not identified as permanent.

The employing establishment advised OWCP that it was currently unable to extend an offer of permanent limited duty. Such an offer would have to await the next National Reassessment Program review, but until then the employing establishment advised that it would continue to provide appellant limited-duty work. OWCP in turn advised appellant that it could not issue a formal LWEC determination based on actual wages because his current limited-duty assignment was not permanent.

Appellant accepted the limited-duty job offer on November 6, 2010, but complained that the written offer did not include pay rate information and did not specifically incorporate Dr. Geld's twisting limitation and a half hour continuous work restriction. On November 15, 2010 the employing establishment amended the November 5, 2010 job offer to reflect the applicable pay rate.

Appellant continued to receive four hours of wage-loss compensation a day. In June 2011, OWCP suspended wage-loss compensation over a four-month period while he received payment of a schedule award. Effective October 4, 2011, payment of wage-loss compensation resumed.

In January 2013, appellant advised OWCP that he reached a settlement in his third-party action regarding the January 28, 2009 injury. The parties settled the case for \$900,000.00. After appropriate adjustments and reimbursement to OWCP for injury-related expenditures, appellant was left with a third-party surplus of \$235,110.11. As such, he was not entitled to receive additional wage-loss compensation and/or medical benefits until the third-party surplus was exhausted. Effective April 7, 2013, OWCP began offsetting appellant's 28-day wage-loss compensation (\$1,697.00) against the third-party surplus.

In early April 2013, appellant filed for disability benefits with both the Social Security Administration (SSA) and the Office of Personnel Management (OPM). Although SSA denied his claim, OPM advised appellant on September 24, 2013 that he was found to be disabled from his position as a city carrier due to degenerative disc disease.⁵ Consequently, appellant was eligible for a FERS-based disability annuity. At the time, he had 629 hours of accrued sick leave. Rather than forfeit his sick leave, appellant elected to postpone the effective date of his OPM disability retirement until after he exhausted his sick leave. In an October 18, 2013 letter, the employing establishment advised him of his various options with respect to his accrued sick leave and OPM disability. The employing establishment explained that by using four hours of

⁵ Appellant was covered under the Federal Employees' Retirement System (FERS).

sick leave a day, appellant's last day in pay status would be December 13, 2013. Appellant signed the letter on October 23, 2013, indicating his intention to exhaust his accrued sick leave prior to the commencement of his FERS-based disability retirement.

In early December 2013, appellant reminded OWCP that he would be separated effective December 13, 2013. He inquired as to whether OWCP would adjust his periodic rolls payment/offset to eight hours a day beginning December 14, 2013. Appellant also sought clarification regarding his entitlement to OPM benefits while drawing down his third-party surplus.

By letter dated December 16, 2013, OWCP advised appellant of the remaining third-party surplus (\$221,534.11), and further explained that he could receive OPM benefits while the surplus continued to be drawn down. It also informed him that FECA benefits would continue to be based on his part-time (four hours/day), limited-duty status in effect at the time of his retirement. Additionally, OWCP noted that appellant's prior limited-duty assignment was still available. Lastly, it advised him that if he believed he was entitled to full compensation (eight hours/day) effective December 14, 2013, he should file a notice of recurrence (Form CA-2a).

Dr. Geld provided a December 19, 2013 work capacity evaluation (OWCP-5c) indicating that appellant was capable of working part-time, limited duty.⁶

A December 23, 2013 PS Form 50 (Notification of Personnel Action) confirmed that appellant's last day in pay status was December 13, 2013, and the reason for his separation was retirement disability. The notification indicated that appellant had been paid for all accumulated leave to which he was entitled under existing law. The remarks section of the form indicated that appellant was totally disabled for "useful and efficient service...."⁷ There was also a notation that he accepted disability retirement per OPM approval dated September 24, 2013.

On January 9, 2014 appellant filed a notice of recurrence (CA-2a). He claimed to have suffered a recurrence of disability beginning September 28, 2013. Appellant alleged that his employing establishment informed him on September 28, 2013 that he "could no longer report to work," and he was given the choice of using four hours of sick leave a day. He also claimed to have advised his employer on October 10, 2013 that his limited-duty assignment was outside his work restrictions.⁸ Appellant allegedly expressed a willingness to forego OPM disability

⁶ According to Dr. Geld, appellant could work four hours a day. He could sit, walk, stand, kneel, and reach above shoulder for four hours. Dr. Geld precluded all twisting, bending/stooping, squatting, climbing, and operating a motor vehicle at work. Additionally, appellant could push, pull, and lift for four hours with a 20-pound restriction. He also required a five- to seven-minute break every half hour. Dr. Geld had last seen appellant on September 20, 2013, at which time he provided a duty status report (CA-17) similarly indicating appellant's ability to perform part-time, limited-duty work.

⁷ As discussed *infra*, Dr. Geld subsequently included the same "useful and efficient service" language in a March 27, 2014 report.

⁸ Appellant based this assessment on an August 28, 2013 evaluation from Dr. Arturo J. Ferreira, an internist, who examined appellant in conjunction with his SSA disability claim. He stated that he received a copy of Dr. Ferreira's report on October 9, 2013.

retirement if the employing establishment provided limited-duty work within his medical restrictions.

OWCP issued recurrence claim development letters on February 18 and March 12, 2014.

In a February 20, 2014 response, appellant indicated that he was not claiming that his condition had materially worsened. Instead, he explained that the basis of his recurrence claim was that his employer withdrew limited-duty work effective September 28, 2013. Appellant also claimed that his prior limited-duty assignment exceeded his medical restrictions. He stated that the job required standing in excess of an hour.⁹ Appellant further stated that he had to lift and/or carry relay bags weighing 35 to 70 pounds, which exceeded his lifting restriction.¹⁰

Although the November 5, 2010 limited-duty job offer did not specifically mention handling relay bags, appellant noted his duties included casing mail and “maintaining all office duties” with respect to his route. He explained that “maintaining all office duties” meant he was expected to prepare relay bags. Appellant submitted statements from a fellow carrier and a local union steward attesting to the fact that part of the duties of pulling down a route included moving relay bags from the route case to the staging area. In a February 20, 2014 statement, John Mack, a union steward, indicated that city carriers were required to fill relay bags with mail weighing 35 to 70 pounds. Appellant submitted a similar statement from local union president, Randy O. Zebin. In a March 12, 2014 letter to OWCP, he reiterated that relay bags exceeded his weight restrictions.

In a March 27, 2014 report, Dr. Geld indicated that appellant was unable to perform “useful and efficient service” as a letter carrier due to his medical conditions.¹¹ He noted that appellant had been on a restricted work schedule that limited him to four hours a day with multiple breaks. Dr. Geld diagnosed L4-5 herniated nucleus pulposus, exacerbation of lumbar degenerative disc disease, L5 spondylolysis secondary to pars interarticularis defect, and lumbar spine sprain/strain. He noted that appellant’s restrictions were permanent. Dr. Geld indicated that appellant was unable to perform the duties of letter carrier because of his inability to carry a shoulder satchel weighing up to 35 pounds or loading/unloading mail containers weighing up to 70 pounds.

On May 5, 2014 the employing establishment advised OWCP that it did not stop appellant from working. It explained that he informed management that he was approved for disability retirement and would have to use his remaining sick leave. The employing establishment further indicated that appellant requested that he be carried on four hours of sick leave per day, and the remaining four hours were to be charged against leave without pay

⁹ Based on his August 28, 2013 evaluation, Dr. Ferreira indicated that appellant could sit, stand, and walk for 30 minutes at a time without interruption. Over the course of an eight-hour day, appellant could sit for four hours, and he could stand and walk for one hour each. Dr. Ferreira indicated that appellant could alternate between sitting, standing, and walking throughout an eight-hour day.

¹⁰ Dating back to June 11, 2009, Dr. Geld consistently imposed a 20-pound restriction with respect to lifting/carrying and pushing/pulling. *See supra* notes 3, 4, and 6.

¹¹ The above-noted passage also appeared in the remarks section of appellant’s December 23, 2013 PS Form 50.

(LWOP) for OWCP purposes. It abided by his request to use sick leave. Prior to that, appellant worked four hours a day as necessary and used LWOP/OWCP four hours a day. Lastly, the employing establishment stated that it did not stop him from working, but simply allowed him to use up his leave as requested and then take disability retirement.

By decision dated May 27, 2014, OWCP denied appellant's claim for recurrence of disability beginning September 28, 2013. It found that contrary to his allegation, the employing establishment did not withdraw limited-duty work, but instead he voluntarily retired.¹²

Appellant requested a review of the written record. He noted that OWCP neglected to address his argument regarding the suitability of the limited-duty assignment he accepted on November 6, 2010. Appellant claimed to have stopped work on September 28, 2013 because his limited-duty assignment required him to work outside his medical restrictions. He reportedly informed the employing establishment of this fact in early October 2013. Appellant further argued that the employing establishment had two and a half months to provide work within his restrictions before he retired on December 13, 2013. He characterized OPM's September 24, 2013 approval of a FERS-based disability annuity as merely coincidental, and not determinative of why he stopped working on September 28, 2013.

While the case was pending before the Branch of Hearings and Review, OWCP referred appellant for a second opinion evaluation with Dr. Willie E. Thompson, a Board-certified orthopedic surgeon. In a July 11, 2014 report, Dr. Thompson found that appellant was not totally disabled. Although incapable of resuming his regular letter carrier duties, appellant was able to work full time (eight hours/day) with restrictions. Dr. Thompson imposed a 20-pound lifting restriction. He also noted that there should be no repeated bending at the waist, no kneeling, crawling, or climbing of ladders, and no work at unprotected heights. In an accompanying OWCP-5c, Dr. Thompson indicated that appellant's restrictions were permanent. He also included the additional work restriction of no squatting.

OWCP declared a conflict in medical opinion between Dr. Thompson and appellant's physician, Dr. Geld. Appellant's other physician, Dr. Salkind, provided an August 6, 2014 OWCP-5c wherein he noted appellant could perform part-time (four hours/day), limited-duty work.¹³

Dr. William H. Simon, a Board-certified orthopedic surgeon and impartial medical examiner (IME), saw appellant on September 3, 2014. He indicated that he agreed with Dr. Geld that appellant could work part time with a 20-pound lifting restriction and breaks every three hours. In a September 10, 2014 OWCP-5c, Dr. Simon noted that appellant could not perform his

¹² OWCP noted that appellant returned to work in a light-duty capacity on June 12, 2009, and continued to perform such work until September 28, 2013. Appellant then used four hours of sick leave a day and claimed LWOP for the remaining four hours, which continued through December 13, 2013.

¹³ Dr. Salkind indicated that appellant had permanent restrictions which included working a maximum of four hours a day. He could sit, walk, stand, kneel, and reach above shoulder for four hours. Dr. Salkind imposed a four-hour, 40-pound restriction with respect to both pushing and pulling. Regarding lifting, appellant had a four-hour, 20-pound restriction. Dr. Salkind precluded all twisting, bending/stooping, squatting, climbing, and operating a motor vehicle at work. He also noted that appellant required a 5- to 15-minute break every half hour.

usual job, but could work four hours. He restricted standing to one hour, and precluded all twisting, bending/stooping, squatting, kneeling, and climbing. Dr. Simon also noted that appellant could push and pull for one hour each, with a 20-pound restriction. Appellant could lift for four hours. Lastly, Dr. Simon noted that appellant required a 15-minute break every three hours.

OWCP subsequently requested clarification regarding the frequency of breaks. Dr. Simon responded on September 29, 2014, noting that appellant told him that prior to his December 2013 retirement he worked four hours a day with a break every three hours. He explained that, if this information was incorrect, then appellant should return to work four hours a day with the number of breaks he was taking prior to December 2013 when he retired.

In a November 19, 2014 letter to the hearing representative, appellant asserted that the record clearly established that the position he held on September 28, 2013 included duties beyond his medical restrictions. He reiterated that he stopped working his limited-duty position on September 28, 2013 because it included duties beyond his limitations, and not because OPM approved a FERS-based disability annuity. Appellant indicated that he informed his employing establishment about the noncompliant limited-duty position on October 10, 2013, and awaited a job offer within his medical restrictions. He did not receive an offer prior to his December 13, 2013 retirement. Appellant again argued that he was entitled to draw down his third-party surplus based on eight hours of lost wages per day beginning December 14, 2013.

In a December 16, 2014 decision, the Branch of Hearings and Review affirmed OWCP's May 27, 2014 decision. The hearing representative found no evidence that the employing establishment withdrew appellant's limited-duty assignment. Instead, the record established that appellant's work stoppage was due to his acceptance of disability retirement benefits. The hearing representative further found that the evidence did not support appellant's claim that the limited-duty position he performed since November 6, 2010 exceeded his medical restrictions. Consequently, he denied appellant's claim for recurrence of disability beginning September 28, 2013.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹⁴ Recurrence of disability also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his established physical limitations.¹⁵ Generally, a withdrawal of a light-duty assignment would constitute a recurrence of disability where the evidence established continuing injury-related disability for regular

¹⁴ 20 C.F.R. § 10.5(x).

¹⁵ *Id.*

duty.¹⁶ A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties, or other downsizing or where a loss of wage-earning capacity determination is in place.¹⁷

Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light-duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.¹⁸

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing that the recurrence is causally related to the original injury.¹⁹ This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.²⁰ The physician's opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.²¹

ANALYSIS

Appellant does not claim, nor does the record support that his September 28, 2013 work stoppage was due to a change in the nature and extent of his injury-related lumbar condition. The record also does not support his contention that he stopped work because the employing establishment withdrew his part-time, limited-duty assignment. Appellant stopped work effective September 28, 2013 so that he could exhaust his accrued sick leave prior to the commencement of his FERS-based disability annuity.

Because of a third-party surplus in excess of \$235,000.00, OWCP stopped paying appellant FECA wage-loss benefits effective April 7, 2013. Prior to that, appellant received approximately \$1,700.00 in wage-loss compensation every 28 days. Although he remained entitled to FECA wage-loss compensation based on his inability to resume full-time work, he could not receive additional compensation until the third-party surplus was exhausted. Accordingly, OWCP began to offset appellant's 28-day periodic rolls payments against the third-party surplus.

When appellant stopped receiving FECA benefits, he applied for both SSA and OPM disability. By letter dated September 24, 2013, OPM advised him that he was found to be

¹⁶ *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6a(4) (June 2013).

¹⁷ 20 C.F.R. §§ 10.5(x), 10.104(c) and 10.509; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b.

¹⁸ *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

¹⁹ 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 and 2.1500.6.

²⁰ *See S.S.*, 59 ECAB 315, 318-19 (2008).

²¹ *Id.* at 319.

disabled from his position as a city carrier due to degenerative disc disease. Within days of receiving OPM's notification, appellant stopped working. He claimed that OPM's notification and the timing of his September 28, 2013 work stoppage were unrelated and merely coincidental.

The October 18, 2013 correspondence from the employing establishment clearly demonstrates that appellant voluntarily chose to stop work and utilize his 629 hours of accrued sick leave prior to commencement of his FERS-based disability annuity. Appellant signed and returned the letter on October 23, 2013, indicating that he chose not to forfeit his sick leave, thereby postponing his OPM disability retirement until December 13, 2013. This fact is further supported by both the December 23, 2013 PS Form 50 and the employing establishment's May 5, 2014 letter to OWCP. Appellant's personnel records indicate that he accepted disability retirement per OPM approval dated September 24, 2013. The PS Form 50 also noted that his last day in pay status was December 13, 2013, and that he had been paid all accumulated leave he was entitled to receive. In its May 5, 2014 statement, the employing establishment indicated that it did not stop appellant from working, but simply allowed him to use up his leave as requested and then take disability retirement. The Board finds that appellant has not established that the employing establishment withdrew his part-time, limited-duty assignment on or after September 28, 2013.

In the alternative, appellant claims a recurrence of disability based on his employing establishment having changed the physical requirements of his part-time, limited-duty assignment to the extent that it exceed his established physical limitations. He claims that the November 5, 2010 part-time, limited-duty assignment required him to stand in excess of an hour and exceeded his 20-pound lifting restriction. According to the written position description, appellant's responsibilities included casing mail and "maintaining all office duties...." He explained that "maintaining all office duties" meant he was expected to prepare relay bags, which was part of pulling down a route. The limited-duty position appellant previously held specifically noted that he was responsible for "Casing [and] Pulling Down Route." The June 12, 2009 job offer indicated an average of 30 minutes would be spent pulling down the route. It also noted a 20-pound lifting restriction. The Board notes that the June 12, 2009 and November 5, 2010 limited-duty job offers do not specifically mention handling relay bags.

Appellant provided statements from a coworker and two union officials explaining that pulling down a route involved placing mail in relay bags, which weighed 35 to 70 pounds, then moving the relay bags to a staging area. Assuming the accuracy of this information, he would have been handling relay bags since his return to limited duty in June 2009. The November 5, 2010 limited-duty offer would not represent a change, but merely a continuation of at least one particular task appellant had already performed for approximately 17 months. The Board notes that appellant raised some concerns to OWCP about the suitability of the November 5, 2010 offer shortly after accepting the position. However, handling overweight relays bags was not among them. By the time appellant first raised this issue in his January 2014 CA-2a, more than four years would have elapsed during which he reportedly handled relay bags beyond his 20-pound restriction. As noted, the November 5, 2010 limited-duty job offer does not specifically

mention either pulling down routes or handling relay bags of any size/weight.²² The Board finds that appellant failed to establish that the employing establishment changed his limited-duty assignment such that the November 5, 2010 job requirements exceeded his established physical limitations.

Appellant did not claim that his accepted lumbar condition had worsened on or about September 28, 2013 when he stopped work. He stopped work voluntarily when OPM approved a FERS-based retirement disability. Appellant appears to have been under the impression that OPM's approval would result in a finding of total disability under FECA, thus enabling him to draw down his third-party surplus twice as fast as when he worked part-time, limited duty. When OWCP explained the facts and failed to find total disability in its December 16, 2013 correspondence, he responded by filing a recurrence claim and alleging that his employer had withdrawn his limited-duty assignment. Appellant also claimed that the limited-duty job he performed for almost two years prior to his September 28, 2013 work stoppage exceeded his physical limitations. As noted, he failed to establish either premise.

Since June 2009, appellant's treating physician, Dr. Geld, has consistently found him capable of working part-time, limited duty. He indicated as much on September 20, 2013, just prior to appellant's work stoppage, and again on December 19, 2013, a few days after the effective date of appellant's disability retirement. Dr. Simon, the IME, similarly found that appellant was capable of working part-time, limited duty. Moreover, Dr. Salkind, Dr. Ferreira, and Dr. Thompson were all of the opinion that appellant could perform some type of limited-duty work, be it full time or part time. Accordingly, the medical evidence of record does not establish that appellant was totally disabled on or after September 28, 2013 due to his employment-related lumbar condition.

CONCLUSION

Appellant failed to establish that he suffered a recurrence of disability on September 28, 2013 causally related to his January 28, 2009 employment injury.

²² Appellant also claims the November 5, 2010 position is inconsistent with Dr. Ferreira's August 28, 2013 one-hour standing limitation. The Board notes that Dr. Ferreira is not one of appellant's physicians, nor is he an OWCP-referral physician. Consequently, appellant's reliance on Dr. Ferreira's opinion is without merit.

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.²³

Issued: April 29, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

²³ Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision. 5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605-10.607.